

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

SERGIO GUADIAN, JR.
Plaintiff.

v.

RECEIVABLES PERFORMANCE
MANAGEMENT, L.L.C.
Defendant.

CIVIL ACTION NO.

4-16CV-0620

TRIAL BY JURY DEMANDED

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Plaintiff Sergio Guadian, Jr., complains of Receivables Performance Management, L.L.C.
Defendant, and for cause of action would respectfully show as follows:

PRELIMINARY STATEMENT

1. This is an action for damages brought by Plaintiff Sergio Guadian, Jr. against Defendant Receivables Performance Management, L.L.C. for violations of the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227(b)(1)(A)(iii).
2. Defendant called Plaintiffs' cellular telephone number using an automated telephone dialing system and should be fully aware that Defendant had no prior express or implied consent to call the cellular telephone. Plaintiff informed Defendant on several occasions to stop calling his cellular telephone but continued to place calls.

JURISDICTION AND VENUE

3. Jurisdiction of this Court arises under 47 U.S.C. §227(b)(3).
4. This Court has jurisdiction over Defendant pursuant to 28 U.S.C. §1391b because Defendant engages in business within this state, to wit debt collection.
5. Venue is proper pursuant to 28 U.S.C. §1391b and 47 U.S.C. §227(b)(3) .
6. Venue in the Northern District of Texas, Fort Worth Division is proper in that the Plaintiff resides in State of Texas, Tarrant County, City of Fort Worth, the Defendant transacts business here, and the conduct complained of occurred here.

PARTIES

7. The Plaintiff in this lawsuit is Sergio Guadian, Jr., (Mr. Guadian, Jr.) a natural person and a citizen of Tarrant County, Texas.
8. Defendant in this lawsuit is Receivables Performance Management, L.L.C. (herein after “Receivables Performance Management”) a company with principal office at Receivables Performance Management, L.L.C., 20816 44th Avenue West, Lynnwood, WA 98036.
9. Receivables Performance Management may be served with process by serving its registered agent for service of process: Mark Case, 20816 44th Ave. W, Lynnwood, WA 98036.

FACTUAL ALLEGATIONS

10. The following telephone numbers are assigned to Receivables Performance Management

to use in their daily business operations:

1. (971) 238-7461
2. (425) 629-9286
3. (877) 297-3156

11. On or about June 26, 2015, Receivables Performance Management began calling Mr.

Guadian, Jr.'s wireless cellular phone.

12. Receivables Performance Management called Mr. Guadian, Jr.'s cellular telephone

number on the following dates and times:

- | | |
|---------------------------------|-----------------------------------|
| 1. June 26, 2015 at 10:49 a.m. | 18. July 24, 2015 at 03:37 p.m. |
| 2. June 26, 2015 at 07:38 p.m. | 19. July 28, 2015 at 12:07 p.m. |
| 3. June 30, 2015 at 10:05 a.m. | 20. July 30, 2015 at 01:37 p.m. |
| 4. June 30, 2015 at 03:59 p.m. | 21. August 01, 2015 at 06:25 p.m. |
| 5. July 02, 2015 at 09:43 a.m. | 22. August 03, 2015 at 03:49 p.m. |
| 6. July 08, 2015 at 10:12 a.m. | 23. August 05, 2015 at 06:51 p.m. |
| 7. July 08, 2015 at 05:51 p.m. | 24. August 07, 2015 at 11:30 a.m. |
| 8. July 10, 2015 at 03:30 p.m. | 25. August 13, 2015 at 08:49 a.m. |
| 9. July 10, 2015 at 08:10 p.m. | 26. August 15, 2015 at 05:10 p.m. |
| 10. July 12, 2015 at 01:20 p.m. | |
| 11. July 14, 2015 at 12:42 p.m. | |
| 12. July 14, 2015 at 05:29 p.m. | |
| 13. July 16, 2015 at 09:48 a.m. | |
| 14. July 16, 2015 at 05:40 p.m. | |
| 15. July 18, 2015 at 05:52 p.m. | |
| 16. July 20, 2015 at 01:51 p.m. | |
| 17. July 22, 2015 at 04:00 p.m. | |

13. On June 30, 2015 at 10:05 a.m., July 14, 2015 at 12:42 p.m., July 14, 2015 at 05:29 p.m.,

June 20, 2015 at 01:51 p.m., and July 30, 2015 at 01:37 p.m., Receivables Performance

Management was informed to stop calling the cellular telephone. Receivables

Performance Management ignored five (5) requests by Mr. Guadian, Jr. to stop calling

the cellular telephone number in question.

14. Each time Mr. Guadian, Jr. answered the incoming telephone call from Receivables Performance Management, there was a noticeable pause before a representative would come on to the line.
15. Mr. Guadian, Jr. has no prior or present established relationship with Receivables Performance Management.
16. Mr. Guadian, Jr. has never given Receivables Performance Management permission to call his cellular telephone at any time.
17. The acts alleged herein all took place in Tarrant County, Texas in that the communications were received there.
18. Receivables Performance Management used an automatic telephone dialing system to dial Mr. Guadian, Jr.'s cellular telephone as defined by the Telephone Consumer Protection Act, 47 U.S.C. §227(a)(1).
19. Receivables Performance Management called Mr. Guadian, Jr.'s cellular telephone for a non-emergency purpose.

COUNT I

**VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. §227(b)(1)(A)(iii)
BY DEFENDANT RECEIVABLES PERFORMANCE MANAGEMENT, L.L.C.**

20. Plaintiff alleges and incorporates the information in paragraphs 1 through 19.

21. 47 U.S.C. §227(b)(1)(A)(iii) which states in part;

(b) RESTRICTIONS ON THE USE OF AUTOMATED TELEPHONE EQUIPMENT.—

(1) PROHIBITIONS.—It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

22. In each telephone communication referenced in ¶12, Receivables Performance

Management has demonstrated willful or knowing non-compliance with 47 U.S.C. § 227

(b)(1)(A) by using an automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call Mr. Guadian, Jr.'s cellular telephone number, which is assigned to a cellular telephone service *with no prior express consent* and for *no emergency purpose*.

23. In each telephone communication referenced in ¶12, Receivables Performance

Management has demonstrated willful or knowing non-compliance with 47 U.S.C.

§227(b)(1)(A)(iii) by using equipment with automatic telephone dialing system or used a telephone dialing system that has the *capacity* to automatically call Mr. Guadian, Jr.'s cellular telephone number, which is *assigned to a cellular telephone service*.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:


- a) Adjudging that Defendant violated the Telephone Consumer Protection Act and/or admission from the Defendant(s) that they violated the Telephone Consumer Protection Act;
- b) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(B); which states in part: an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.
- c) Awarding Plaintiff statutory damages, pursuant to 47 U.S.C §227(b)(3)(C); which states in part: If the Court finds that the Defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the Court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 (three) times the amount available under subparagraph (B) of this paragraph.
- d) Awarding such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff is entitled to and hereby demands trial by jury.

Dated: January 20, 2016

Respectfully Submitted,


Sergio Guadian, Jr.
3057 Old Hickory Trail
Forest Hill, TX 76140
(817) 821-0392
guadianjr.sergio@yahoo.com

JAN 25 2016

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the clerk of court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Sergio Guadian, Jr.

(b) County of Residence of First Listed Plaintiff Tarrant
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Receivables Performance Management, L.L.C.

County of Residence of First Listed Defendant Snohomish
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

4-16CV-0620

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227(b)(1)(A)(iii)

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED PENDING OR CLOSED CASE(S)

IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

01/20/2016

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

FW025759 \$4.00

N

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